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INVESTIGATION AND STUDY OF THE SEAWARD BOUNDARIES OF THE UNITED STATES

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

PURSUANT TO

H. Res. 676, 82d Cong.

AUTHORIZING AN INVESTIGATION AND STUDY OF THE SEAWARD BOUNDARIES OF THE UNITED STATES

JANUARY 2, 1953.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
OFFICE OF THE CHAIRMAN,
Washington, D. C., December 30, 1952.

Hon. RALPH R. ROBERTS,
Clerk, House of Representatives,
The Capitol, Washington, D. C.

DEAR MR. ROBERTS: The attached report of a special subcommittee of the Committee on Interior and Insular Affairs appointed pursuant to House Resolution 676, Eighty-second Congress, second session, to investigate and study the seaward boundaries of the United States, has been submitted by the subcommittee having charge of the study and is hereby forwarded to the House of Representatives.

This subcommittee report was submitted too late for submission to the full committee for consideration; however, it is deemed advisable to have it printed in report form in order that the general outline of the problem may be made available to the Members of the Eighty-third Congress with the recommendation that the problem be given further study and provision made for its completion during the next Congress.

Sincerely yours,

JOHN R. MURDOCK, M. C.,
Chairman.

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D. C., December 30, 1952.

Hon. JOHN R. MURDOCK,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

DEAR MR. MURDOCK: Pursuant to your appointment of me as chairman of the Subcommittee on Inland Waters appointed pursuant to House Resolution 676, I am pleased to transmit herewith our report.

Sincerely yours,

CLAIR ENGLE, M. C.,
Chairman, Subcommittee on Irrigation and Reclamation.

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82D CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2515

INVESTIGATION AND STUDY OF THE SEAWARD BOUNDARIES OF THE UNITED STATES

JANUARY 2, 1953.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURDOCK, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[Pursuant to H. Res. 676, 82d Cong., 2d sess.]

INTRODUCTION

Following is a report of the subcommittee appointed pursuant to House Resolution 676, Eighty-second Congress, second session, which authorized and directed the Committee on Interior and Insular Affairs, acting as a whole or by subcommittee, "to conduct a full and complete investigation and study of the seaward boundaries of the States and continental United States and the Territory of Alaska in order to determine the proper criteria for fixing the seaward limits of the inland or territorial waters of the United States, and the seaward boundaries of the United States and Alaska." The members of the subcommittee designated by Chairman Murdock were as follows:

Representative Clair Engle, chairman, California
Representative Ken Regan, Texas
Representative Lloyd M. Bentsen, Jr., Texas
Representative Samuel W. Yorty, California
Representative Norris Poulson, California
Representative William H. Harrison, Wyoming
Representative Hamer Budge, Idaho

Two hearings were held, one in Los Angeles, Calif., on October 3 and 4, and the other in New Orleans, La., on December 10 and 11. Representative Yorty, the author of House Resolution 676, was necessarily absent from the Los Angeles hearing because of a trip to Korea. Representative Regan of Texas was unavoidably absent from the New Orleans hearings. The subcommittee was fortunate in

having the participation in the New Orleans hearing of Representative John P. Saylor, of Pennsylvania, who, while a member of the full committee, is not a member of the subcommittee. T. V. A. Dillon, who joined the committee as counsel after the Los Angeles hearing, also attended the New Orleans hearing. The committee had planned to hold hearings in Washington and at several other places in the United States but was unable to do so because of conflicts with other previously scheduled official committee work and other demands upon the time of the membership of the subcommittee since adjournment. The subcommittee feels that before a definitive answer as required by House Resolution 676 can be given, further hearings should be held in various sections of the country, including New England. Likewise, the views of Government agencies such as the Departments of State, Defense, and Justice, among others, will have to be secured. In addition, the committee would benefit considerably from additional testimony on behalf of certain economic interests, such as the fishing industry.

The authorizing resolution which was passed by the House in the closing days of the second session of the Eighty-second Congress further directed the committee to report to the House, or to the Clerk of the House in the event the House was not in session, "as soon as practicable during the present Congress the results of its investigation and study, together with such recommendations as it deems advisable."

The problem presented by House Resolution 676 presents complicated legal and economic issues, national defense and foreign policy ramifications, involved questions of international law, and fundamental issues of Federal-State relations which could not be resolved in the limited time available to the committee from its creation to the deadline for filing a report. Realizing this, your committee has sought to ferret out the basic issues of fact, policy, and law which are involved, as well as the historic background of the controversy, and to develop a record which generally reflects the fundamental issues involved and the position of the interested parties. As stated by Chairman Engle at the opening of the hearing in Los Angeles, the subcommittee hoped from such information to—

> draft an interim report for submission to the House indicating to the House what we have discussed in regard to the magnitude of this problem and its importance, from which the next Congress can make an intelligent determination as to what extent this study and investigation should proceed in the new Congress.

WITNESSES

The subcommittee was fortunate in having witnesses of a very high caliber both in the Los Angeles and New Orleans hearings. Included among these witnesses were some of the foremost experts in the United States on the problems with which we were concerned. The subcommittee was deeply impressed by the thorough and scholarly way these witnesses presented their various viewpoints.

The witnesses were as follows:

Los Angeles

Everett W. Mattoon, assistant attorney general, State of California.

Francis J. Hortig, senior engineer in the Division of State Lands, State of California.

Hillman A. Hansen, a resident of the city of Long Beach, Calif.

John J. Real, manager and attorney for the Fisherman's Cooperative Association of San Pedro, Calif.

Mr. Real appeared briefly before the subcommittee and was granted permission to submit a statement at a later date. The statement has been received. It is noted that the following organizations have joined the views set forth therein.

Boat owners associations:

Fishermen's Cooperative Association, San Pedro, Calif.

American Tunaboat Association, San Diego, Calif.

Southern California Commercial Fishing Boat Owners Cooperative, Inc., Long Beach, Calif.

The foregoing organizations represent the owners of approximately 400 tuna clippers, purse seiners, and albacore vessels who fish for mackerel and sardines in California and for tuna off the shores of Latin America.

Labor unions:

Seine and Line Fishermen's Union (AFL), San Pedro, Calif.

Cannery Workers and Fishermen's Union (AFL), San Diego, Calif.

Cannery Workers Union of the Pacific (AFL), San Pedro, Calif.

The foregoing three unions are affiliated with the Seafarers International Union of North America (AFL) Fishermen's Union (Local 33, ILWU), San Pedro, Calif.

The foregoing unions represent approximately 14,600 California fishermen and cannery workers.

Canners organizations:

California Fish Canners Association, Terminal Island, Calif.

Tuna Research Foundation, Long Beach, Calif.

The foregoing organizations represent 15 canners of tuna, mackerel, and sardines in California.

New Orleans

Hon. Price Daniels, attorney general, State of Texas, and United States Senator-Elect from Texas.

Fred S. LeBlanc, attorney general, State of Louisiana.

John L. Madden, assistant attorney general, State of Louisiana.

Judge Leander H. Perez, district attorney, Plaquemines Parish, La.

Dr. James P. Morgan.

A. H. Glenn, A. H. Glenn & Associates, New Orleans, La.

Ben C. Belt, vice president, Gulf Oil Corp.

Marcus Hanna, chief paleontologist, Gulf Oil Corp., Houston, Tex.

Mrs. Lucille May Grace.

J. Ashton Greene, J. Ashton Greene Associates, economic consultants, New Orleans, La.

Additional statement

Subsequent to the close of the hearings the subcommittee received a written statement from Mr. Aaron L. Shalowitz, Special Assistant to the Director of the United States Coast and Geodetic Survey, and Chief of the Section of Research, Review, and Technical Information. The statement has been incorporated in the subcommittee records.

LOCAL INTEREST

There was considerable local interest in the work of the subcommittee. We were impressed and pleased with the fine interest shown by His Honor de Lesseps Morrison, mayor of New Orleans. Mayor Morrison received the committee upon its arrival in New Orleans and presented each member with a certificate of honorary citizenship and a key to the city. He was further host to the subcommittee at a luncheon on the last day of the hearings. We were further honored by the presence and active interest in the work of the subcommittee of three highly esteemed colleagues from the State of Louisiana: Hon. Henry D. Larcade, Jr., of the Seventh District, Hon. F. Edward Hébert of the First District, and Hon. Ed Willis of the Third District. These members were for the most part in attendance throughout the hearings in New Orleans and were in a large measure responsible for the success of our hearings there.

In addition to the interest shown in our work by California and Louisiana officials, we were pleased at the active interest in the subject matter evidenced by the citizenry of the cities of Los Angeles and New Orleans. The hearings were well attended by local people who showed keen interest in and appreciation of the subject matter. The local newspapers in both cities gave excellent coverage to the day-to-day developments at the hearings. In addition, the major press associations had representatives on hand to report the hearings.

INSPECTION OF THE AREA

One high light of our trip to New Orleans was an opportunity on the day we left to make an inspection trip by air of the Louisiana coast line. This trip gave us a valuable insight into the nature of the coast line, the economic activity carried on therein, and cast considerable light on some of the peculiar problems faced by Louisiana.

We noted, for example, that Louisiana has what is perhaps the most irregular and dynamic coast line in the United States. For great distances off shore along the coast, the water is so shallow as to render navigation, save for small fishing craft, impossible. It is characteristic of the coast for reefs, underseas hummocks, and other solid formations to rise to the surface at some times and at others to be completely submerged.

The relationship of these off-shore water areas to the economy of the State of Louisiana and its people as evidenced by the extensive shrimp and other fishing operations, oyster cultivation, oil and gas production impressed us greatly.

I. Background of the Problem

Although our country is now 163 years old, no one can say exactly where our seaward boundaries are located. Along much of our long coast line, it is impossible to say, even within a few miles, where our territory ends and the high seas begin.

To understand this strange and surprising situation, it is necessary to consider the nature of the offshore water areas. Lying between the high seas and the mainland of the United States are two water areas known as the marginal belt and the inland waters. For the purposes

at hand, the width of the marginal belt is to be regarded as a constant factor: it is three nautical miles wide.[1] This 3-mile protective belt is measured from the seaward limit of inland waters, or where there are no inland waters, from the low-water mark on the shoreline (*United States* v. *California*, 332 U. S. 19 (1947)).

Witnesses at the New Orleans hearings urged a substantial increase in the width of the marginal belt. Consideration of that question does not seem to be within the scope of this subcommittee's investigation. However, the question is of such paramount importance that we recommend that future legislation for continuance of this study in the next Congress include authorization to inquire into and consider action on the question of increasing our marginal belt.

By contrast, the width of the inland waters is a variable factor. Depending on the nature of the coast line and upon how the various kinds of inland waters (such as bays, harbors, and channels) are defined, inland waters may be broad or narrow or nonexistent. In turn, the seaward boundary of the inland waters may either hug the shoreline or may be several miles seaward from the shoreline. Since the high seas lie 3 miles (the width of the marginal belt) seaward from the inland waters, the place where our territory ends and the high seas begin depends directly upon the width of the inland waters. In short, the extent of our inland waters controls the location of our seaward boundary.

The uncertainty about the location of our seaward boundaries is due to the fact that until recent years there was little occasion to consider the extent of our inland waters. Recent events, however, have brought the question to the attention of the public and Government officials.

Advances in science and technology have in recent years made it possible to develop and extract some of the vast reservoir of resources which are contained in the submerged lands off our shores. For instance, it has been only in the last 50 years that oil has been discovered in the submerged offshore lands, and only in the last 25 years have methods been perfected for the extraction of this oil. As a result of the development of these offshore resources, conflicting claims have arisen between the State and Federal Governments as to the right to dispose of the resources.

Such conflicting claims were before the Supreme Court of the United States in the three Marginal Sea cases (*United States* v. *California*, 332 U. S. 19 (1947), *United States* v. *Louisiana*, 339 U. S. 699 (1950), *United States* v. *Texas*, 339 U. S. 707 (1950)). In the California case, the Supreme Court held that the Federal Government has paramount rights and powers in the 3-mile marginal belt of water lying off our shores and that the State's ownership is limited to the lands underlying inland waters and above low-water mark. However, the Supreme Court did not locate the dividing line between the 3-mile marginal belt and the inland waters. Indeed the Court said that it assumed that to locate the line would involve "many complexities and difficulties."

To aid in the determination of the dividing line between inland waters and the marginal belt, the Supreme Court appointed a special

[1] Congressman Regan and Congressman Bentsen of Texas assert that the marginal belt of Texas is 3 leagues.

master (334 U. S. 855). After two preliminary references, Special Master William H. Davis was directed by the Supreme Court on December 3, 1951, to hold hearings and submit "his recommended answers" to questions concerning the location of inland waters. During the course of these hearings, the Department of Justice asserted that the past position (as shown by a historical résumé) and the present position (as shown by two letters from the State Department) of the United States is comprised of the following main elements: (1) If an indentation is to be regarded as a bay constituting inland waters, it must be 10 miles or less in width and it must be a deep indentation. To be "deep," an indentation must meet the so-called Boggs formula, set forth at page 15 infra; (2) islands are not to be considered in determining a nation's inland waters; each island has its own marginal belt; if a strait or a channel connecting parts of the open sea and lying between the mainland and off-lying islands is less than 6 miles wide, it is in the marginal belt, but in no case is it inland waters.

At the hearings, the State of California contended (1) that the bays, harbors, and channels in the areas under consideration had been claimed and established as inland waters; (2) that this claim is not in conflict with any settled policy of the United States or with international law; (3) that if the waters under consideration were not already established as inland waters, they should be so declared because of the circumstances and conditions present in the coastal area; and (4) that the water areas should be held to be inland waters on historic grounds.

On October 24, 1952, the special master submitted a report to the Supreme Court accepting the general position advanced by the Department of Justice as to the seaward limit of inland waters, except that the special master recommended that harbor areas within the outermost permanent harbor works should be classified as inland waters. The parties have until January 9, 1953, to file exceptions to this report. In rejecting California's contentions in his report, the special master emphasized that his task was to make a judicial determination of the applicable principles of law based on the prior actions of the United States and not to make a "determination of what might or might not be a wise policy for the Nation to adopt within this field for which the political, not the judicial, agencies of the Government are responsible." These proceedings before the special master, coupled with the master's finding that it is not his function to determine what is "wise policy" for the Nation, have brought the question of the seaward limit of our inland waters sharply to the attention of the political agencies of the Government.

The decisions of the Supreme Court in the Louisiana and Texas cases have also underscored the necessity for fixing a seaward limit of inland waters. In the Louisiana case, the Supreme Court decreed that the United States has paramount rights in the lands lying seaward of ordinary low-water mark and outside of inland waters for a distance of 27 marine miles (340 U. S. 899). In the Texas case, the Supreme Court held that the United States has paramount rights in the lands of the Continental Shelf lying seaward of low-water mark and outside inland waters (340 U. S. 900–901). Obviously, these decrees make it highly important to determine the seaward limits of inland waters.

Another important development in bringing the question of our seaward boundaries to public attention is the decision of the International Court of Justice on December 18, 1951, in the case between United Kingdom and Norway. Over Great Britain's protest, the International Court held in that case that Norway's definition of her seaward boundaries is in accordance with international law. This decision has drawn attention not only to the fact that the United States is one of the few major nations in the world which has not clearly defined its seaward boundaries, but also the fact that the United States has a wide range of choice in fixing its seaward boundaries. The extensive compilation of foreign laws made available to the committee by California indicates the broad and varied nature of the claims by other nations as to the limits of inland waters.

II. Legal Questions Involved

A. How does international law affect a nation's claim to inland waters?

1. Does international law establish a minimum area of inland waters?

International law has not yet reached the stage where it automatically confers a certain minimum belt of inland waters on a nation. There is general agreement on this proposition. The fact that international law does not itself establish a minimum belt of inland waters is shown by the state of the International Court of Justice in *United Kingdom* v. *Norway*, that "the act of delimitation is necessarily a unilateral act because only the coastal state is competent to undertake it." The statement clearly indicates that each nation must establish its own belt of inland waters and that in the absence of such action, no particular area of inland waters is conferred on a nation by international law or in any other way.

The special master appointed by the Supreme Court in the California case reached the same conclusion in his report submitted to the Supreme Court on October 24, 1952. The master said:

> The absence from international law of any customary, generally accepted rule or rules fixing the baseline of the marginal belt is, indeed, conspicuous (p. 8). * * * (it) is implicit in the positions taken by each of the parties, and in the documentary records to which they direct attention, that there is no customary generally recognized rule of international law which establishes automatically as a matter of common right the criteria by which the baseline of the marginal belt is to be located.

2. Does international law determine the maximum area of inland waters that a nation can claim?

Although international law does not automatically confer a certain minimum amount of inland waters on a nation, it does not follow that there are absolutely no principles of international law which are applicable. Indeed, it generally agreed that a nation is subject to international law when it fixes seaward boundaries of its inland waters and that such boundaries must be measured against certain principles of international law. In *United Kingdom* v. *Norway* the International Court of Justice emphasized this fact when it stated that the fixing of a nation's seaward boundaries "cannot be dependent merely upon the will of the coastal state as expressed in its municipal law," and that the validity of seaward boundaries "with

regard to other states depends upon international law." (Judgment, p. 132)

However, the rules of international law do not indicate with mathematical certainty exactly how much a nation can claim. The reason for this is obvious: Coast lines differ and so do the needs of different nations and different peoples. The International Court underscored this fact in *United Kingdom* v. *Norway* when it said that there were no rules of a "technically precise character" by which the validity of a nation's seaward boundary under international law could be measured. (Judgment, p. 132.)

Although it did not lay down any precise or mathematical rules, the International Court of Justice did hold that the three basic considerations which provide a basis for determining the validity of a nation's boundary under international law are as follows:

(1) the "base line must not depart to any appreciable extent from the general direction of the coast";

(2) the sea areas brought within the base line must be "sufficiently closely linked to the land domain to be subject to the regime of internal waters"; and

(3) "certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by long usage," should not be overlooked (pp. 132–133).

These three considerations stated by the International Court of Justice are general standards which are to be applied in testing the validity of a nation's claim to inland waters. However, even though a nation's seaward boundaries may not meet the tests set up in the above considerations, they may nevertheless be valid under international law on the ground of their historical usage. In *United Kingdom* v. *Norway* the International Court of Justice said that "by 'historical waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of a historic title." (Judgment, p. 130.) "Historic waters" under international law are established by usage, occupancy, or a claim by a nation for a considerable period of time which shows that certain waters are regarded as inland waters and that their status has been recognized or acquiesced in by other nations.

B. WHAT POWER DOES CONGRESS HAVE TO FIX THE SEAWARD BOUNDARIES OF INLAND WATERS?

1. Is the question of our seaward boundaries justiciable—or political—or both?

It has long been recognized that most, if not all, questions confronting the Federal Government can be divided into two categories: (i) "justiciable" questions to be decided by the courts and (ii) "political" questions to be decided by the Legislature or the executive branch of our Government. (See *Marbury* v. *Madison*, 1 br. 137, 165–166 (1803).) The line of demarcation between "justiciable" and "political" questions has always been a difficult one to draw, depending, as it does, more on judgment and policy than on any clear or certain technical rules. The most recent decision in which the Supreme Court discussed the factors which make a question "justiciable" or "political" is *Coleman* v. *Miller* (307 U. S. 433 (1939)) where the Court said:

It would unduly lengthen this opinion to attempt to review our decisions as to the class of questions deemed to be political and not justiciable. In determining whether a question falls within that category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations (pp. 454–455).

This historic distinction between "justiciable" and "political" questions makes it necessary to determine the category into which the problem of fixing the seaward boundaries of inland waters falls. If the problem here concerned an internal boundary between States of the Union, it would be clear that the question would be justiciable. In 1892, the Supreme Court held that the determination of the boundary between the State of Texas (after it had entered the Union) and the Territory of Oklahoma was a "justiciable" and not a "political" question. *United States* v. *Texas* (143 U. S. 621, 641). However, the Supreme Court strongly suggested in that case that a different conclusion might be required if the external boundaries of the United States were involved. The Supreme Court left this clear inference by distinguishing several cases cited on the ground that "they relate to questions of boundary between independent nations" (143 U. S. 639).

Since the fixing of the seaward limit of inland waters concerns our external boundaries, there appears to be a large measure of agreement among persons who have studied the question of the seaward boundaries of inland waters that it is *not* wholly justiciable, i. e., not solely for the decision of the courts. In its brief to the Supreme Court of July 31, 1951, the State of California urged—

> the determination of our national external boundaries or of our sovereignty over any given area falls within the category of questions which, because of their international consequences, are political and not justiciable (p. 14).

To the same effect, the brief for the United States before the special master in May 1952, stated:

> The same fundamental postulate of judicial abstention and judicial deference to the political branches, in the realm of international affairs, has been applied, throughout our national history, to executive determinations as to the nature and extent of the Nation's maritime jurisdiction (pp. 14–15).

The special master in the California case reached a similar conclusion in his report to the Supreme Court, where he stated:

> * * * it seems clear to me that the question whether the national interest would best be served by placing the national base line of the marginal belt as far seaward as possible is one which calls for "decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry" (p. 40).

The reason for the general agreement that the question is not wholly "justiciable" lies in the fact that the fixing of the seaward limit of inland waters inevitably has an effect on our foreign relations. The long line of Supreme Court decisions which establish the principle that questions involving foreign affairs are "political" questions can be illustrated by the following quotation from *C. & S. Air Lines* v. *Waterman Corp.* (333 U. S. 103 (1948)):[2]

[2] The committee has had available extensive briefs by the United States and the State of California which were filed in the pending case between those parties and which cite many cases supporting the "political" nature of this question because of its international implications.

* * * the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, executive and legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry (p. 111).

However, the fact that a question is not "wholly justiciable" does not necessarily mean that it is "wholly political" in the sense that courts can have nothing to do with it. The fact that the responsibility for the decision of a particular question rests with the political branches does not appear automatically to oust a court of jurisdiction in all cases. In a number of cases, the Supreme Court has recognized the "political" nature of the question involved and then proceeded to apply the decision which has been reached by the political branch.[3] To that extent, such questions are "justiciable" as well as "political."

There is a serious difference of opinion as to whether the fixing of the seaward boundaries is the kind of a "political" question which is also "justiciable" at the present time. The State of California has urged in recent proceedings in the California case that the "political" branches have not made a decision on the questions of our seaward boundaries and therefore that the courts have no power to render a decision as to our seaward boundaries. The Department of Justice has argued, however, in those same proceedings that the policy of the United States has been set forth in past actions and in a present declaration by the executive branch of our Government and that it is proper for the court to apply this "political" decision. The special master accepted the argument of the United States in his report to the Supreme Court. The Supreme Court will probably act on this issue sometime in 1953.

2. If this is a political question, does Congress or the executive branch have the power to decide the question or is it their joint responsibility

Even if we assume that the fixing of the seaward boundaries of inland waters is a "political" question, there is a difficult problem as to whether the Congress or the executive branch (or both) has power to decide the question.

One point of view [4] is that Congress has exclusive (or at least joint) responsibility for fixing the seaward boundaries because that act will be equivalent either to an acquisition or a surrender of our territory. If our seaward boundaries are fixed as far seaward as possible within the limits of international law, that will be tantamount to the acquisition of new territory for the United States. If, on the other hand, our seaward boundaries are fixed close to the shore line, that will be equivalent to the surrender of territory which the United States might otherwise have claimed.

According to this point of view, the responsibility under our Constitution for such an acquisition or surrender of territory is vested in

[3] Eg. *Jones* v. *United States* (137 U. S. 202), *Oetjen* v. *Central Lumber Co.* (246 U. S. 297), *Ludecke* v. *Watkins* (335 U. S. 160).

[4] This point of view has been urged by the State of California in the proceedings before the special master appointed by the Supreme Court in the California case.

the Congress. The disposal or surrender of property of the United States is explicitly vested in Congress by article IV of section 3, clause 2 of the Constitution. Likewise, the argument runs, every constitutional provision under which the power to acquire territory has been implied requires congressional action.[5]

The opposing point of view taken by the Department of Justice in the proceedings before the master in the California case is that congressional action is unnecessary in the fixing of our seaward boundaries. It is urged that because the fixing of the seaward boundaries is a matter of concern to foreign nations, it is within the competence of the executive to decide without congressional action. It is said that support for this position is found in prior decisions relating to foreign affairs and in the fact that the 3-mile marginal belt became a part of our territory "by virtue of executive action, little aided by congressional action." (Brief for the United States before the special master, May 1952.)

The special master accepted, by implication, the view that congressional action is unnecessary in his report to the Supreme Court. New light may be cast on this question when the Supreme Court acts on the master's report, probably in 1953.

3. Does Congress have the power to change a State boundary in fixing the seaward limit of inland waters?

It is entirely possible that the fixing of the seaward boundaries of inland waters may have some effect on the boundaries of the coastal States. This could happen in one of two ways: (i) The seaward limit of inland waters might be fixed in such a way that the outer boundary of the marginal belt (which marks the beginning of the high seas) would not be as far seaward as a State's boundaries. Under such circumstances, it might be argued that the fixing of the seaward boundaries of inland waters would tend to curtail the State's boundaries. (ii) On the other hand, the seaward boundaries of inland waters—and hence the seaward limit of the marginal belt—might be fixed further seaward than the State's boundaries. In that circumstance, a question would arise whether the State's boundaries are automatically extended or could be extended to the seaward limit of the marginal belt, or at least to the seaward limit of inland waters.

In connection with this possible effect on a State's boundaries, it might be urged that the present boundaries of the States constitute a limiting factor on the power of Congress to fix the seaward limits of inland waters. The argument would be that in the absence of consent by the State involved, Congress can take no action which would in any way impair or curtail the boundaries of the coastal States which were approved when they came into the Union. On the other hand, it could be contended that the seaward boundaries of

[5] The Supreme Court has said that, "the war power and the treaty-making power, each carries with it authority to acquire territory" *Stewart* v. *Kahn* (11 Wall. 493, 507 (1870)): Chief Justice Marshall in *American Ins. Co.* v. *Canter* (1 Pet. 511 (1828)). The war power is exclusively vested in Congress by art. I, sec. 8, clause 11, of the Constitution. Under art. II, sec. 2 of the Constitution, the treaty power can be exercised only with the concurrence of two-thirds of the Senators present. In *Dred Scott* v. *Sandford* (19 How. 393, 446 (1856)), the Court said that, "The power to expand the territory of the United States by the admission of new States * * * has been held to authorize the acquisition of territory * * *." This power, like the war and treaty-making power, is vested in the Congress by the Constitution (art. IV, sec. 3, clause 1). It has also been held that Congress can exercise the inherent power of the United States to acquire territory by discovery and occupation. See *Jones* v. *United States* (137 U. S. 202 (Guano Islands Act, 11 Stat. 119)); *Mormon Church* v. *United States* (136 U. S. 1, 42 (1890)).

coastal States cannot restrict the Federal Government in acting under its power over external relations to fix the seaward limits of inland waters.

There are a few legal guideposts to aid in the consideration of these problems. One tangent of this problem was considered in *United States* v. *Louisiana* (399 U. S. 699 (1950)). In 1938, Louisiana sought to extend its southern boundary 24 miles seaward of the 3-mile marginal belt. The Supreme Court held, however, that the "matter of State boundaries has no bearing" on the controversy between the Federal Government and the State of Louisiana over paramount rights to the water area seaward of inland waters. The Court said that if "the 3-mile belt is in the domain of the Nation rather than of the separate States, it follows a fortiori that the ocean beyond that limit also is." The Court was careful to say, however, that "we intimate no opinion on the power of a State to extend, define, or establish its external territorial limits or on consequences of any such extension vis-à-vis persons other than the United States or those acting on behalf of or pursuant to its authority" (339 U. S. 705).

It could be argued on the basis of these statements in the Louisiana case that the fixing of the seaward limits of inland waters has no effect on a State's boundary which extends beyond the resulting seaward limit of the marginal belt. As in the Louisiana case, the State's more extensive boundary might not be totally invalid, but merely ineffective as against the United States in the marginal belt and areas seaward therefrom. The results would be as follows: The State would have jurisdiction, control, and ownership of the inland-water area. Beyond the seaward limit of inland waters, the area would be under the paramount power of the United States even though the State's boundary extended into the area. But the State may possess certain powers in the area where its boundaries extend seaward of inland waters even though paramount rights and powers are in the Federal Government. In *Toomer* v. *Witsell* (334 U. S. 385, 393 (1948)), the Supreme Court held that South Carolina could regulate fishing within its boundaries even though that involved regulation in the 3-mile marginal belt, provided South Carolina's regulatory scheme did not conflict with any assertion of Federal power.

The question is somewhat different where the seaward limit of inland waters is fixed beyond the present boundaries of a State. At the outset the question arises whether the act of fixing the seaward limits in such case would automatically extend the boundaries of a State. Assuming that the boundaries of a State could not be automatically changed without its consent, the question then arises whether a State could act to extend its boundaries. Whether congressional approval would be required for such an extension is a difficult question, like the others in this section, which cannot be answered categorically on the basis of existing precedents.

If the seaward boundaries of the inland waters and, in turn, of the marginal belt are farther seaward than the State's boundary, the area of the United States as a whole might temporarily exceed the sum of the areas of the several States. This paradoxical situation, if such it be, seems to exist already on the California coast as a result of the decision in *United States* v. *California* (332 U. S. 19). The court in that case pointed out:

The Government complaint claims an area extending three nautical miles from shore; the California boundary purports to extend three English miles. One nautical mile equals 1.15 English miles, so there is a difference of 0.45 of an English mile between the boundary of the area claimed by the Government, and the boundary of California. See Cal. Const. Act XXI, 61 (1879) (332 U. S. at 23, note 1).

Since the Court held that the United States has paramount rights in a marginal belt three nautical miles wide, the area of the United States extends 0.45 English miles farther seaward than that of California all along the coast. This fact did not appear to trouble the Supreme Court.

4. *Assuming that Congress has the power to act, to what extent, if at all, is Congress limited by the past action or the failure to act of any Federal agency?*

Although it is generally agreed that Congress has never acted to fix our seaward boundaries, there is a difference of opinion whether the executive branch of our Government has so acted. In the current proceedings in the California case, the Department of Justice is contending that the executive branch in the past has adopted a policy which has the general effect of placing the seaward limit in inland waters very close to our shores. The State of California, on the other hand, contends that a review of history indicates that the executive has not adopted such a policy. Consequently, it is necessary to consider whether Congress is restricted by either the past action or the failure to act of any Federal agency.

There is good reason to think that notwithstanding past action or inaction, Congress is now free to fix our seaward boundaries in accordance with the three basic considerations outlined in the decision of the International Court of Justice in *United Kingdom* v. *Norway*. The primary basis for this view is the fact that *United Kingdom* v. *Norway* is the first comprehensive statement by an international body of the rules of international law relating to the fixing of the seaward boundaries of inland waters. A persuasive argument can be made that any position taken by the United States prior to that decision was based on a mistaken impression as to international law, or at least on inadequate knowledge as to the state of such law. The letter written by the Secretary of State to the Attorney General on November 13, 1952 (before *United Kingdom* v. *Norway* was decided) for the purpose of the California case, goes far to establish that there was such a mistaken impression.

The decision of the International Court provides an opportunity for the United States, as well as other nations, to reexamine its inland-water policy in light of the principles of the decision. Where Federal agencies had taken a limited position or no position at all, it would seem proper for the Congress to adopt a new position at this time. Indeed, the historical résumé of Norway's position by the International Court showed a broadening and amplification of Norway's claims to inland waters, thus indicating that the Court did not feel that Norway was bound by its earliest statement. Moreover, testimony has been brought to the committee's attention indicating that several other countries, including Great Britain, intend to extend their claims to inland waters on the authority of the decision in *United Kingdom* v. *Norway*.

In the event that Congress might attempt to claim certain inland waters on special historical grounds, a somewhat different situation might obtain. A claim made in 1952 that a certain water area is inland waters on historical grounds might not be as likely to satisfy the requirements of international law as would a claim that had been consistently asserted for 100 years. To that extent, inaction by Federal agencies may limit Congress. Moreover, positive declarations by an agency of the United States sometime in the past that the United States did not claim a particular water area as inland waters would be an even greater handicap to the establishment of a historic title now or in the future. However, if enough historical data could be adduced to support a claim to a water area, it is entirely possible that past action or inaction in this area would not be fatal.

C. WHAT EFFECT DOES THE ASSERTION OF JURISDICTION BY THE STATES AND ACTIONS BY THE STATES AND INDIVIDUALS IN THESE WATERS HAVE UPON THE FIXING OF THE SEAWARD LIMIT OF INLAND WATERS?

During the hearings held by the committee a number of witnesses testified that the coastal States have asserted sovereignty over the offshore water areas and that the States and their citizens have treated these areas as inland waters. It is necessary to consider the importance of such facts, assuming their existence.

In the recent proceedings in the California case, there is a difference of opinion whether assertions of jurisdiction by the States in the offshore waters are equivalent for the purpose of creating historical inland waters to assertions by the Federal Government. The State of California insists that they are equivalent, and the Department of Justice argues to the contrary. That controversy need not detain us here. Whether or not assertions by the States can actually constitute an assertion by the United States, it is agreed by all parties that assertions by a State would be an appropriate element for one of the "political" branches of the Federal Government to consider in deciding what to claim for the United States on historical grounds. (Master's report of October 24, 1952, p. 31, note 22.) The short of the matter is that such assertions of jurisdiction by a State would provide an important basis for any claim that Congress might make to these waters on historical grounds.

Similarly, other actions such as usage and occupancy by individuals or by a State may constitute the predicate for a claim by the Congress that certain waters are historic inland waters. It is a long-established rule of international law that historical usage and occupany are persuasive in showing that a water area is historical inland waters. In *United Kingdom* v. *Norway*, the Court reviewed the historic evidence and concluded that traditional rights in an area which are "founded upon the vital needs of the population and attested by very ancient and peaceful usage may legitimately be taken into account" in fixing a nation's inland waters (judgment, p. 142).

But claims and actions by States and individuals are not relevant only in sustaining a claim to inland waters on a special historic basis. Such claims and action would also be important evidence in showing

that a particular claim to inland waters is in accordance with the general considerations of international law. These claims and actions would help show that the sea areas are "sufficiently closely linked to the land domain to be subject to the regime of internal waters" (*United Kingdom* v. *Norway*, judgment, p. 133). Moreover, actions by individuals such as long-established fishing habits in a particular water area might be helpful in showing "certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage" (ibid.).

III. Prominent Methods of Fixing Seaward Boundaries

Although nearly all methods involve refinements and special rules, four prominent methods of fixing a nation's seaward boundaries can be summarized as follows:

A. The most restrictive method would be to measure the marginal belt from all of the sinuosities of the shore line. As a result of this method, the seaward edge of the marginal belt would be an exact tracing of the contour of the shore line. To reduce the jagged and uneven character of the marginal belt, a slight variation known as the arcs-of-circles method has been devised. In the arcs-of-circles method, the seaward limit of the marginal belt is fixed by drawing arcs of a circle with a 3-mile radius from all points along the coast. Under such a method there would be no inland waters and our seaward boundaries would hug the shore line as closely as possible.

B. The second method of fixing our seaward boundaries would be to determine the existence of inland waters by fixing arbitrary limits on the dimensions of inland waters, such as the permissible width between the headlands of a bay or the permissible width of channels. Thus, for example, a nation might lay down the rule that all bays whose headlands are less than 10 miles apart and all channels which are less than 10 miles wide are inland waters. In such a case the 3-mile marginal belt would be measured from the seaward side of such bays and channels. The United Kingdom advanced such a rule in the recent case against Norway in the International Court of Justice. The International Court said, however, that "the 10-mile rule has not acquired the authority of a general rule of international law" (judgment, p. 131).

C. A third method of locating our seaward boundaries would be to use a combination of the arbitrary distance method and the application of a mathematical and geometrical standard concerning the shape of the inland waters. For instance, the rule might be laid down that all indentations whose headlands are less than 10 miles apart should be tested by a complex mathematical formula to determine whether they should be regarded as "deep" bays. This formula, known as the Boggs formula, makes use of the arcs-of-circles technique, but it should not be confused with the arcs-of-circles method (described above) of producing a smoother marginal belt. If the bay meets the twin standard of the 10-mile rule and the formula, it is regarded as inland water and the marginal belt is measured 3 miles seaward from the seaward limit of the bay. This method, with certain extensions

to take care of other types of inland waters, has been recommended by the special master for use in fixing the limits of inland waters in the case of *United States* v. *California*.[6]

D. The fourth method of fixing seaward boundaries is for a nation to draw straight lines between points on its coast line. The selection of the points between which the straight lines are drawn is made on the basis of what would be in a nation's best interest and of what is permitted under international law. This method is the one which was used by Norway and objected to by Great Britain in the case of *United Kingdom* v. *Norway*. The International Court of Justice upheld the use of this method by 10 votes to 2 and upheld by 8 votes to 4 the particular application of the method made by Norway. As this method was applied by Norway, straight lines were drawn between points as far as 38 and 44 miles apart.

IV. Policy Questions That Must Be Decided

The most vital considerations to be weighed so far as Congress is concerned in determining and fixing our seaward boundaries have not yet been discussed. These are the policy questions that must be decided. The ultimate policy question is whether our Nation's seaward boundaries should hug the shore line or should be as far seaward as possible or should be some place in between. In this connection it must be decided whether our economic interest is best served by seaward boundaries that closely hug the shore line or that are as far out as possible, or that are somewhere between these two extremes. The same question arises with reference to national defense and to our foreign relations. Similarly, there are geographical, historical, and law-enforcement considerations that should and must be weighed in any decision.

There may well be disagreement in each particular field on which policy is best. Moreover, one interest may be best served by a narrow belt of inland waters while a broad belt may be desirable from the standpoint of another interest. When that occurs, it will be necessary to determine the relative weight to be given to the various factors involved and which one, if any, of them should have a preponderance over all others. A brief discussion of some of these policy questions follows in this section.

1. Economic interests in broad and narrow inland waters

The economic life of an entire coastal community may depend upon the proper placement of our seaward boundaries. Important offshore resources can only be brought within the exclusive jurisdiction of the United States by fixing the outer limits of inland waters as far sea-

[6] The following is a statement of the Boggs formula as proposed by the Department of Justice and recommended by the master to determine whether indentations are bays constituting inland waters: "for indentations having pronounced headlands no more than 10 nautical miles apart a straight line shall be drawn across the entrance; the envelope of all areas of circles having a radius equal to one-fourth the lengths of the straight line shall then be drawn from all points around the shore of the indentation; if the area enclosed by a straight line across the entrance and the envelope of the arcs of the circles is greater than that of a semicircle with a diameter equal to one-half the length of the line across the entrance, the waters of the indentation shall be regarded as inland waters; if otherwise, the waters of the indentation shall be regarded as open sea.

"Where the headlands are more than 10 nautical miles apart, the line shall be drawn across the indentation through the point nearest the entrance at which the width does not exceed 10 miles, and the same procedure shall be employed to determine the status of the waters inside that line (A/15)."

Some of the committee members are seriously apprehensive of the potential injury to the national welfare if this formula is accepted by the Supreme Court and applied by the Executive.

ward as possible. To place the seaward boundaries closer to shore might result in a surrender of some of the present and vast potential of resources of the seas that the United States might otherwise have claimed. In view of the facts we think it would be a mistake to decide the location of the outer boundaries of inland waters solely on the basis of the question as to whether the particular States or the Federal Government shall have the ownership of the oil.

The right to take the resources of the sea and the resources under the sea as between our country and the citizens of foreign nations may become a matter of very practical concern. In 1945 President Truman by proclamation sought to extend the jurisdiction of the United States to the resources under the sea in the Continental Shelf. The effect of this proclamation was to stake out a claim to whatever natural resources exist in the Continental Shelf under the ocean, but it did not include any of the resources in the ocean water itself. Immediately thereafter other nations issued similar proclamations, some of them being much broader and amounting to an assertion of absolute sovereignty clear to the edge of their Continental Shelf. The legal effect of these proclamations is not certain and a special committee of the United Nations is giving study to it at this time. However, in the area which the United States claims as inland waters, there is no doubt but that our Nation has exclusive ownership of the resources of the ocean as well as the underlying land.

Mr. John J. Real, manager and attorney for the Fishermen's Cooperative Association of San Pedro, Calif., testified briefly at our Los Angeles hearings and later filed a statement for the record. Mr. Real opposed the claims made by California to a broad area of inland waters on the ground that the recognition of such claims would be adverse to the economic interests of the fishing industry by causing us to lose the fishing rights which we now claim and exercise contiguous to the coasts of foreign countries. All of the fishing industry is not, so we are informed, in agreement with this position; in other areas of the country, the fishing industry supports a broader definition of inland waters as favoring their economic interest. This difference of opinion illustrates the importance of further study of this question.

While time did not permit us to hear from the industries using our coastal waters for the purposes of navigation and passenger and freight shipping, they also have a very strong economic interest in where and how our inland water boundaries are determined. Moreover it is clear that fishing and shipping are only two of the many economic interests vitally affected by any decision we make with reference to our inland waters.

2. The effect on national defense

Foreign warships and aircraft are wholly unrestricted in their movement on the high seas, but they are subject to control within our seaward boundaries. Consequently, the fixing of the outer limits of inland waters and of our seaward boundaries will determine how near foreign warships and aircraft may lawfully approach our shores and harbor installations. Moreover, the fixing of the outer limits of inland waters will determine the location of our neutrality zone for that has been one of the historical functions of the marginal belt.

Consequently, careful consideration must be given to the military dangers to placing our seaward boundaries immediately adjacent to our shores and on the other hand to the military advantages to placing them as far seaward as permissible under international law

On April 25, 1952, the Department of the Navy addressed a letter to Congressman Celler, chairman of the Committee on the Judiciary, commenting on House Joint Resolution 373, Eighty-second Congress, a joint resolution introduced by our colleague, Mr. Yorty, for the purpose of declaring the boundaries of the inland waters of the United States to be as far seaward as permissible under international law. In that letter the Navy Department vigorously opposed a broad belt of inland water and for that reason opposed House Joint Resolution 373 on the grounds that—

> The United States has always been one of the world's foremost advocates of freedom of the seas * * * because of this the Navy has always advocated the 3-mile limit of territorial waters delimited in such way that the outer limits thereof closely follow the sinuousities of the coast line * * * The time-honored position of the Navy is that the greater the freedom and range of its warships and aircraft, the better protected are the security interests of the United States because greater utilization can be made of warships and military aircraft.

The Navy, in effect, says that an extension of our inland water boundaries will be followed by similar action by foreign countries and that the net result will be that our superior naval power will be kept farther from shore lines throughout the world. Therefore the Navy argues that we should set an example by fixing a narrow belt of inland waters. The assumption of this argument is that other nations will follow our precedent. We raise a serious question as to whether or not what we do will make any difference to foreign nations. The decision in the *United Kingdom* v. *Norway* shows that other nations have the right under international law to claim a broad belt of inland waters. All history shows that people have a tendency to move out to the limit of the law. If the United States fails to extend its seaward boundaries to the limits of international law on the assumption that other nations will follow our precedent, we fear that we will find ourselves in a family of nations which have a broad belt of inland waters while our seward boundaries are closely hugging our shore line. The result would be that foreign warships and aircraft would have the right of innocent passage in our marginal belt very close to our shore line.

The Defense Department asserts that we can establish a defensive zone outside of our territorial waters and keep foreign warships out of that zone. While this may be true and there appears to be some precedent for it, the establishment and maintenance of such a defensive belt depends mainly upon the exercise of power and not upon international law. Moreover, the existence of such a zone indicates that the United States has a special interest in these areas which would make it desirable to set them aside as inland waters.

The position of the Navy Department as set forth above is supported by the position of the State Department in a letter of April 23, 1952, addressed to Congressman Celler, as chairman of the House Committee on the Judiciary, with reference to the same resolution. In this letter, the State Department says:

> This Government has had occasion in recent years to protest in several instances claims made by a number of nations with a view to extending their terri-

torial waters anywhere from 12 to 200 miles. Even then, these nations did not have the benefit of so persuasive a reason as would result from the combination of an International Court of Justice decision and a United States construction of that decision. Moreover, the obvious interests of nations which are not, like the United States, strong maritime powers are more likely to be served by an extension of their control over their adjacent waters at the expense of the principle of freedom of the seas, whereas the interests of the United States would seem to lie the other way, whether they concern fishing, commercial shipping and flying, or naval and air activities in time of peace and of war.

The same caveat is raised with reference to the State Department's position as we have with reference to that of the Navy Department. However, this committee would want to give very careful consideration to the views of the Defense Department and the State Department in a field so clearly within the special knowledge and duties of these two departments of Government and on an issue so vital to our national welfare.

3. Geographical questions in the determination of inland water boundaries

Whether a particular indentation constitutes a bay or whether particular channels should be designated as inland waters must be considered in relation to the geographic character of the particular coast line and coastal area in which it occurs. For instance, suitable shelter for ports and harbors are relatively rare on the Pacific coast in contrast to the many which exist on the Atlantic shore. On the Pacific coast where places of shelter are at a premium it may well be vital to designate every useful indentation as a bay or harbor within the exclusive jurisdiction of our Nation. Other geographic factors such as prevailing wind, temperatures, tides, and wave action may also have a bearing on whether any given indentation or channel should be designated as inland waters.

The proximity of neighboring nations is another geographic factor which should guide our determination of our seaward boundaries. Where we have maritime neighbors only a short distance across an ocean or other body of water, sound diplomacy may dictate that we make a more modest claim as to our seaward boundaries than we would where there is a vast expanse of ocean between our Nation and its maritime neighbors.

The hearings in Louisiana were particularly revealing in regard to the weight which should be given to geographical factors. The trip our subcommittee took by air over the shore and coastal area of Louisiana was highly informative on this score. There is a startling difference between the shore and coast line of Louisiana and Florida on the one hand and that of Texas and California, on the other hand. To say that these contrasting coastal areas should be treated exactly alike with reference to the definition of inland waters would ignore geographical factors that are wholly different.

The Louisiana shore line, which literally changes from day to day, raises the question whether some consideration should be given to depth of water as a possible criteria in determining the boundary of inland waters. On this point, interesting testimony of a technical nature showed that at approximately 5 fathoms deep, the tides and wind no longer affect or change the contour of the areas below the water. But tremendous areas of water along the shore line of Louisiana are not 3 fathoms deep. Moreover, Judge Perez, who testified at the New Orleans hearing, positively asserted that navigation was an essential incident of the marginal belt. If that is true, then the base-

line of the marginal belt must be placed far enough out to permit seagoing navigation.

Limitations of time have prevented this subcommittee from holding any hearings on the east coast, but such hearing should be held. In fact, it is our considered opinion that all portions of our coast line from Maine to Alaska should be given careful attention before establishing the criteria and the general rules applicable to inland waters. The geographical variations in our coast line are so great that criterial and general rules which would fit fairly well in major portions of our coast line might be inadequate for the geographical situation in some others.

4. Effect of inland water boundaries on law enforcement

The offshore area has traditionally played a vital role in attempts to smuggle narcotics, aliens, and liquor into this country. Sanitation along the coast line also is a vital concern to coastal areas because vessels can pollute the coast line and ruin resort areas by dumping their garbage and other refuse. Law-enforcement officials would be aided in minimizing smuggling and the violation of sanitation laws if they were able to pursue and apprehend law violators in a broad expanse of waters that are within our seaward boundaries.

A custom belt for law-enforcement purposes of 12 miles has been asserted by our country and is generally recognized. It is also probable that special sanitation belts can be set up. But it must be remembered that we have exclusive jurisdiction over inland waters which gives far more control than could be asserted in special belts for law enforcement or sanitation purposes. As a matter of fact, the ships of foreign nations might dispute our sanitation belt if beyond the edge of inland waters, but they could hardly dispute our absolute control inside the outer edge of our inland waters on any recognized principle of international law. Moreover, the fact that special law enforcement and sanitation belts have become necessary is itself an indication that these two factors are important and have a definite bearing on the location of the inland water line. While these two considerations may not be as vital as some others already mentioned, they should not be ignored.

5. Historical usage

As pointed out above, a nation may be justified in treating waters as within its seaward boundaries on the basis of historical facts even though such a designation would not otherwise be valid under international law. This obviously makes it necessary for careful consideration to be given to the historic status of our offshore areas in determining where our seaward boundaries should be fixed, and emphasizes the statement already made that careful, detailed attention be given to the entire shore line of the country before the general criteria and rules are established.

6. International practices

Practices of other nations are important in connection with fixing our seaward boundaries, first, because we should be guided by the lessons and experience of other nations which have considered this problem over a long period of time, and second, because the United States must consider the range of choice which would be within the

limits of international practice so that it can fix lines on which it would be willing to stand in an international controversy.

The practices of other nations in defining their seaward boundaries are widely divergent. Some nations claim the waters of all bays and harbors along their coasts regardless of size, while other nations claim only the waters of bays having particular dimensions. Many nations measure the marginal belt from the outermost island off the coast while other nations take account only of islands within limited distances from the mainland. As pointed out, the State of California has presented to the committee an exhaustive compilation of the laws of other nations, with translations, which delimit inland waters or fix the base of the marginal sea. A general summary of the practices of the various nations based upon the laws as set forth in the compilation follows.[7]

I. Islands:

(1) Base lines along the seaward side of outermost islands, islets, rocks and reefs: Cuba, Denmark, Sweden, Norway, Saudi Arabia, Iceland.

(2) Base lines more than 6 miles long drawn around particular islands, islets, rocks and reefs: Australia, Denmark, Ecuador, Great Britain, Norway, Sweden, Canada.

II. Bays:

(1) All bays claimed as inland waters without regard to dimensions: Ceylon, Brazil, Denmark, Norway, Great Britain, New Zealand, Peru, Sweden, Venezuela, Australia, Russia, Saudi Arabia.

(2) Claims to particular bays of great dimensions: Argentine Republic, Spain, Sweden, Australia, Bulgaria, Russia, Canada, Denmark, Egypt, France, Japan, Norway, Guatemala.

(3) Claims to bays of limited dimensions but wider than 10 miles: Brazil, 12 miles; Greece, 20 miles; Italy, 20 miles; Peru, 20 miles.

(4) Claims to bays of dimensions limited to 10-mile bays: Brazil, Germany, Netherlands, Great Britain, Uruguay, and Iran.

III. Ports, entries to ports, roadsteads and harbors included in inland waters: Australia, Belgium, Denmark, Great Britain, Poland.

IV. Base lines drawn between salient points: Brazil, Ecuador, Guatemala, Spain.

IV. Conclusions

Your subcommittee has not tried to give a definitive answer to the seaward boundaries problem. The time at our disposal for study of this complicated subject has been too short to attempt more than a definition of the problem. In the report we have endeavored to point out the areas in which more study is needed, the legal questions which confront us, and the policy determinations that must be made.

Our study has convinced us that the inquiry should be continued in the next Congress, and that the new committee should be provided adequate funds to employ the necessary experts to assist it in resolv-

[7] The compilation presented by California has been challenged in some quarters on the ground that many of the laws cited do not distinguish between inland and territorial waters.

ing the complex economic, legal, and policy questions which we have outlined in this report. Although it may not be possible for the committee to lay down a hard and fast rule or formula for the fixing of the seaward boundaries of our inland waters, we believe that it can recommend the general criteria to be applied, following which Congress can and should establish such criteria and general policies as it finds proper as a clear expression of the will of the legislative branch in this field.

We do not believe that it is practical for a congressional committee to draw the seaward boundaries of our inland waters. After the Congress has established the criteria for such a line and declared the general and controlling principles under which it is to be fixed, the job of applying these rules on the ground should be delegated to a commission which should be directed to fix the line by actual survey and report the same to Congress for its approval.

Washington, D. C., December 29, 1952.

CLAIR ENGLE, *Chairman.*
KEN REGAN.
LLOYD M. BENTSEN, Jr.
SAMUEL W. YORTY (Except as to the conclusions.)
NORRIS POULSON.
WILLIAM H. HARRISON.
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O